

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

**HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,**

Plaintiff,

vs.

12cv1186 MCA/RHS

**NINE FORTUNE, LLC d/b/a CHINA WOK
and HAU FU CHENG,**

Defendants.

ORDER GRANTING MOTION TO WITHDRAW

THIS MATTER comes before the Court on Defendants' Counsel's Opposed Motion to Withdraw (Doc. 19). The Court has considered the Motion, Plaintiff's Response (Doc. 20) and Defendants' Reply (Doc. 21), and concludes that the Motion will be granted.

Defense counsel asserts that a conflict in the representation relationship has arisen and that the breach cannot be remedied. Plaintiff opposes defense counsel's motion to withdraw because it could prejudice Plaintiff's ability to obtain timely discovery or obtain a judgment. While this may be true, current defense counsel has made it clear that he cannot continue to represent Defendants and would therefore not be able to participate in timely discovery either.

Defendant Hua Fu Cheng, who the court presumes is a natural person, will proceed *pro se* unless and until the Court is notified that Defendant Cheng has obtained new counsel.

Defendant Nine Fortune, LLC, doing business as China Wok, must be represented by counsel consistent with D.N.M.LR-Civ. 83.7, which states, "[a] corporation, partnership or business entity other than a natural person must be represented by an attorney authorized to practice before this Court." Defense counsel's motion fails to comply with D.N.M.LR-Civ. 83.8(c), which states:

A motion to withdraw from representation of a corporation, partnership or business entity other than a natural person must include a notice that the corporation, partnership or business entity other than a natural person can appear only with an attorney. Absent entry of appearance by a new attorney, any filings made by the corporation, partnership or business entity other than a natural person may be stricken and default judgment other sanctions imposed.

Plaintiff has not referenced this Local Rule or argued how it should be applied in this instance. Despite defense counsel's failure to adhere to the Local Rule, the Court will grant the Motion and Mr. Brian A. Thomas may withdraw from representing Defendants. The Clerk of the Court is requested to mail a copy of this Order to Artie Cheng, China Wok, 3901 Menaul NE, Albuquerque, New Mexico 87110 so that Mr. Cheng may be thoroughly advised that failure to obtain counsel for Defendant Nine Fortune, LLC, doing business as China Wok, may result in future filings being stricken from the Court record, default judgment being entered against the business entity, or other sanctions, including monetary sanctions imposed by the Court.

If Plaintiff desires more time to complete discovery, Plaintiff may file a motion requesting an extension of deadlines.

Robert Hayes Scott

ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE